

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #3	CCRB Case #: 201802943	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 12/24/2017 1:30 PM	Location of Incident: In front of 320 5th Avenue; en route to the Midtown South stationhouse	Precinct: 14	18 Mo. SOL 6/24/2019	EO SOL 6/24/2019	
Date/Time CV Reported Tue, 04/17/2018 10:17 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/17/2018 10:17 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Rivera	01434	951152	MTS PCT
2. SGT Susan Auyeung	03845	949839	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Susan Auyeung	Force: In front of 320 5th Avenue, Sergeant Susan Auyeung used physical force against § 87(2)(b)	
B.POM Robert Rivera	Force: In front of 320 5th Avenue, Police Officer Robert Rivera used physical force against § 87(2)(b)	
C.POM Robert Rivera	Discourtesy: In front of 320 5th Avenue, Police Officer Robert Rivera spoke discourteously to § 87(2)(b)	
D.SGT Susan Auyeung	Abuse: En route to the Midtown South stationhouse, Sergeant Susan Auyeung did not obtain medical treatment for § 87(2)(b)	
E.POM Robert Rivera	Abuse: En route to the Midtown South stationhouse, Police Officer Robert Rivera threatened § 87(2)(b) with the use of force.	

Case Summary

On April 17, 2018, § 87(2)(b) filed this complaint with the CCRB via telephone.

On December 24, 2017, at approximately 12:45 PM, Police Officer Robert Rivera and Sergeant Susan Auyeung responded to a 911 call for a three-card monte game in front of 320 5th Avenue in Manhattan. PO Rivera and Sgt. Auyeung observed § 87(2)(b) and two other unapprehended males facilitating a three-card monte game. PO Rivera and Sgt. Auyeung both approached § 87(2)(b). PO Rivera quickly moved to apprehend another male, and § 87(2)(b) and Sgt. Auyeung began to struggle. Sgt. Auyeung tripped § 87(2)(b) to the ground (**Allegation A: Force**, § 87(2)(g)). Both Sgt. Auyeung and § 87(2)(b) fell to the ground, and Sgt. Auyeung injured her head. PO Rivera then re-approached § 87(2)(b) and punched him several times in his ribs (**Allegation B: Force**, § 87(2)(g)). § 87(2)(b) complained of pain, and PO Rivera allegedly stated, “Well die then” in response (**Allegation C: Discourtesy**, § 87(2)(g)). PO Rivera and Sgt. Auyeung handcuffed § 87(2)(b) and transported him to their police vehicle to transport him to the Midtown South stationhouse. While en route to the Midtown South stationhouse, Sgt. Auyeung allegedly refused to provide medical attention to § 87(2)(b) (**Allegation D: Abuse of Authority**, § 87(2)(g)), and PO Rivera allegedly threatened § 87(2)(b) with the use of physical force (**Allegation E: Abuse of Authority**, § 87(2)(g)).

There is no video evidence in regards to this case.

§ 87(2)(b) was arrested in regards to this case, and charged with assault in the second degree, fraudulent accosting, resisting arrest, possession of a gambling device, obstruction of governmental administration, and promoting gambling (**08 Board Review**).

Findings and Recommendations

Allegation (A) Force: In front of 320 5th Avenue, Sergeant Susan Auyeung used physical force against § 87(2)(b)

§ 87(2)(b) (**01 Board Review**) stated that he exited the D train at the corner of West 34th Street and 6th Avenue, and walked to the corner of West 32nd Street and 5th Avenue. § 87(2)(b) then stood alone in front of 320 5th Avenue in Manhattan, waiting to see if any of his friends were going to walk by. After § 87(2)(b) had been standing there for approximately two minutes, Sgt. Auyeung approached § 87(2)(b) on foot from behind, grabbed § 87(2)(b)'s jacket at his chest level, and pulled him towards her. § 87(2)(b) did not know that Sgt. Auyeung was a police officer, because she was wearing plain clothes, and did not have a shield visible, and because § 87(2)(b) did not suspect that the police would be approaching him, because he had not done anything wrong. After Sgt. Auyeung pulled § 87(2)(b) towards her, she stuck out her leg, and pushed him over it, causing § 87(2)(b) to fall to the ground. Sgt. Auyeung fell to the ground along with § 87(2)(b). § 87(2)(b) stated that he was standing alone, and denied speaking with anyone as he stood, or playing a three-card monte game.

Sgt. Auyeung (**02 Board Review**) stated that she and PO Rivera responded to a 911 call placed about a three-card monte game happening in front of 320 5th Avenue, facilitated by three black

males. Once Sgt. Auyeung and PO Rivera arrived at the location, they observed three black males playing what appeared to be three-card monte, surrounded by a group of tourists. The males were standing around a table made from crates. Sgt. Auyeung could not see specifically what the males were doing, because the tourists crowded around the table were obstructing her view. Sgt. Auyeung also thought that they were playing three-card monte because the game is a condition in the precinct, due to the large number of tourists who frequent the area. Sgt. Auyeung and PO Rivera approached the males. Sgt. Auyeung approached § 87(2)(b) asked Sgt. Auyeung why she was stopping him. Sgt. Auyeung responded that she was a police officer, and § 87(2)(b) ran away. Sgt. Auyeung told § 87(2)(b) to stop running, and ran after him. § 87(2)(b) reached the other side of the sidewalk. Sgt. Auyeung tried to grab § 87(2)(b)'s arm, and § 87(2)(b) pulled his arm away. Sgt. Auyeung and § 87(2)(b) fell to the ground. Sgt. Auyeung did not know specifically how she came to fall, except that she fell as a result of § 87(2)(b) trying to flee and pulling away from her. Sgt. Auyeung hit her head against the pavement on the street, and began bleeding from the right side of her head. Sgt. Auyeung landed on top of § 87(2)(b) was flailing his arms and trying to get up off of the ground.

PO Rivera (**03 Board Review**) did not see how § 87(2)(b) came to be on the ground. PO Rivera was in the process of handcuffing one of the other facilitators of the game, but released that individual when he saw Sgt. Auyeung fall, because she appeared injured.

The 911 caller (**04 Board Review**) stated that there was a three-card monte game happening on 5th Avenue between West 31st and West 32nd Streets. The caller described the facilitators as three middle aged black males. The ICAD (**11 Board Review**) also shows that on December 24, 2017, at 12:30 PM, a 911 call was made in regards to three black males playing three-card monte.

§ 87(2)(b) was charged with fraudulent accosting and possession of a gambling device. The property vouchers (**09 Board Review**) in regards to his arrest show that he was in possession of three playing cards.

According to Patrol Guide Procedure 221-02, an officer may use only the reasonable force necessary to gain control or custody of a subject (**14 Board Review**).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

Allegation (B) Force: In front of 320 5th Avenue, Police Officer Robert Rivera used physical force against § 87(2)(b)

Allegation (C) Discourtesy: In front of 320 5th Avenue, Police Officer Robert Rivera spoke discourteously to § 87(2)(b)

§ 87(2)(b) (01 Board Review) stated that after he and Sgt. Auyeung fell to the ground, PO Rivera immediately approached him, and punched him between seven and eight times in his head and chest. § 87(2)(b) was on the ground, and PO Rivera was standing over him. § 87(2)(b) attempted to cover his head while PO Rivera was punching him, but did not make any other movements. § 87(2)(b) told PO Rivera to stop punching him because he had a preexisting heart condition, and had previously had heart surgery in regards, and PO Rivera stated, “Well die then.”

PO Rivera (03 Board Review) stated that after he observed Sgt. Auyeung fall to the ground as a result of § 87(2)(b) trying to overpower her, he approached to assist in apprehending § 87(2)(b). Sgt. Auyeung was lying on the ground, and appeared to be woozy and moving slowly. PO Rivera observed that Sgt. Auyeung was bleeding from his head. Sgt. Auyeung was still trying to take § 87(2)(b) into custody, and was holding on to § 87(2)(b)'s arm. § 87(2)(b) was trying to stand up off of the ground. PO Rivera told § 87(2)(b) repeatedly to stop resisting, and § 87(2)(b) continued to try and stand up. PO Rivera then struck § 87(2)(b) with a closed fist in the area of § 87(2)(b)'s stomach and ribs. PO Rivera struck § 87(2)(b) between two and four times. PO Rivera allowed for some time to pass between strikes, and told § 87(2)(b) to stop resisting, and to give § 87(2)(b) time to comply. § 87(2)(b) continued to try and stand up. PO Rivera did not know how long the period of time was that he struck § 87(2)(b) in. PO Rivera did not punch § 87(2)(b) in his face or head. § 87(2)(b) was not responsive to PO Rivera's strikes, so PO Rivera then used his body weight to take § 87(2)(b) to the ground. Once § 87(2)(b) was brought to the ground, PO Rivera and Sgt. Auyeung were able to place handcuffs on him. § 87(2)(b) did not complain of pain or injury. PO Rivera did not state, “Well die then.”

Sgt. Auyeung (02 Board Review) stated that she did not see PO Rivera strike § 87(2)(b). § 87(2)(b) did not receive medical attention. Sgt. Auyeung did not hear PO Rivera state, “Well die then.”

§ 87(2)(b)'s arrest photograph (07 Board Review) does not show any visible injuries.

The TRI (10 Board Review) prepared by PO Rivera states that a forcible take down and hand strikes were used by MOS against § 87(2)(b) for self-defense, to stop a fleeing subject, and to overcome resistance or aggression. The TRI also shows that § 87(2)(b) did not have any injury, and shows that Sgt. Auyeung sustained injury.

The command log entry (12 Board Review) marking § 87(2)(b)'s entry into the stationhouse states that § 87(2)(b)'s physical condition was apparently normal.

According to Patrol Guide Procedure 221-02, an officer may use only the reasonable force necessary to gain control or custody of a subject (**14 Board Review**).

§ 87(2)(g)

Allegation (D) Abuse of Authority: En route to the Midtown South stationhouse Sergeant Susan Auyeung did not obtain medical treatment for § 87(2)(b)

Allegation (E) Abuse of Authority: En route to the Midtown South stationhouse, Police Officer Robert Rivera threatened § 87(2)(b) with the use of force.

§ 87(2)(b) (**01 Board Review**) stated that he repeatedly asked PO Rivera and Sgt. Auyeung for medical attention while in transport to the stationhouse. § 87(2)(b) stated that he had a preexisting heart condition, and that this condition was exacerbated as a result of PO Rivera punching him. Sgt. Auyeung did not respond to § 87(2)(b) and PO Rivera stated that if § 87(2)(b) was lying he would, “Get another beating.” Once § 87(2)(b) arrived at the Midtown South stationhouse and was lodged in the holding cells, PO Rivera called an ambulance for § 87(2)(b) and § 87(2)(b) was transported to § 87(2)(g) hospital, where he stayed for forty eight hours.

PO Rivera (**03 Board Review**) and Sgt. Auyeung (**02 Board Review**) both stated that § 87(2)(b) did not request medical attention, and did not have any visible injury, or complain of pain.

PO Rivera (**03 Board Review**) stated that he did not tell § 87(2)(b) that if he was lying he would, “Get another beating,” and did not otherwise threaten § 87(2)(b) with the use of force. PO Rivera stated that § 87(2)(b) did not go to the hospital, because PO Rivera was with him the entire time he was at the stationhouse.

Sgt. Auyeung (**02 Board Review**) stated that she was transported to the hospital once she returned to the stationhouse, due to the abrasion she sustained to her head. As such, Sgt. Auyeung did not know if § 87(2)(b) went to the hospital.

The lodging status section of § 87(2)(b)'s BADS (Booking Arraignment Disposition System) page (**15 Board Review**) regarding his arrest does not show that he was transported to a hospital. The page shows that § 87(2)(b) was transported from the 14th Precinct to central booking, where he complained of chest pain. § 87(2)(b) was transported back to the 14th Precinct, and was then returned to central booking. This sheet disproves § 87(2)(b)'s allegation that he spent forty eight hours at the hospital, because it shows he returned to central booking less than twenty four hours later.

The CCRB submitted a subpoena to § 87(2)(b) to obtain § 87(2)(b)'s medical records, and received back correspondence stating that § 87(2)(b) had not received medical attention at

their hospital. The CCRB then sent a subpoena to § 87(2)(g) [REDACTED], and received back correspondence that § 87(2)(b) [REDACTED] had not received treatment. The CCRB sent a third subpoena to § 87(2)(g) [REDACTED], and received receipt that the hospital had received the CCRB's certified mail, but the subpoena was subsequently returned to the CCRB unfilled, indicating that § 87(2)(b) [REDACTED] did not receive treatment there (**13 Board Review**).

The command log (**12 Board Review**) shows that § 87(2)(b) [REDACTED] was taken to central booking, returned to the station house, and returned to central booking for a second time, as was reflected in § 87(2)(b) [REDACTED]'s BADS page discussed above. The command log does not note that § 87(2)(b) [REDACTED] received medical attention.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been party (**05 Board Review**).
- PO Rivera has been a member of service for seven years and has four previous allegations, with no substantiations. PO Rivera has four previous physical force allegations.
- Sgt. Auyeung has been a member of service for seven years and has one previous allegation, with no substantiations. Sgt. Auyeung has one previous physical force allegation.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: 3

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date